

AMENDED IN SENATE APRIL 10, 2003

AMENDED IN SENATE MARCH 10, 2003

SENATE BILL

No. 145

Introduced by Senator Alpert

February 6, 2003

An act to amend ~~Section~~ *Sections 56505, 56505.1, and 56506* of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

SB 145, as amended, Alpert. Special education: due process rights.

Existing law enumerates the due process hearing rights that extend to a special education pupil and the parent, including the right to obtain an independent educational assessment.

Existing law also enumerates the requirements for a state hearing, including the requirement that the state hearing be conducted by a person knowledgeable in the laws of special education, and sets forth the authority of the hearing officer.

This bill would further require that the state hearing be conducted by a full-time employee of a specified organization who spends at least 90% of his or her working hours on special education disputes. The bill would require that the decision of the hearing officer be subject to review by a senior or supervising hearing officer. The bill would further authorize the hearing officer to set a reasonable time limit for the hearing, as specified.

This bill, in addition, would ~~require a local educational agency to allow an independent educational assessment to be conducted, including the observation by an independent assessor~~ *provide that if a local educational agency observed the pupil in conducting its*

evaluation, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity applies to an independent educational assessment of the pupil in the pupil's current or proposed educational placement, regardless of whether the assessment is initiated before or after the filing of a due process hearing proceeding. To the extent school districts would be required to allow schoolsite access to independent assessors, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 56506 of the Education Code is~~
- 2 *SECTION 1. Section 56505 of the Education Code is*
- 3 *amended to read:*
- 4 56505. (a) The state hearing shall be conducted in
- 5 accordance with regulations adopted by the board.
- 6 (b) The hearing shall be held at a time and place reasonably
- 7 convenient to the parent or guardian and the pupil.
- 8 (c) The hearing shall be conducted by a person knowledgeable
- 9 in the laws governing special education and administrative
- 10 hearings pursuant to Section 56504.5. The hearing officer shall

1 encourage the parties to a hearing to consider the option of
2 mediation as an alternative to a hearing.

3 (1) *As used in this chapter, “special education hearing officer”*
4 *means a full-time employee of an organization described in*
5 *Section 56504.5 who spends at least 90 percent of his or her*
6 *working hours on special education disputes. To ensure the quality*
7 *of the decisions rendered by these hearing officers, each decision*
8 *rendered by a hearing officer shall be reviewed by a senior or*
9 *supervising hearing officer, prior to the issuance of the decision.*
10 *This review shall provide the hearing officer with information*
11 *concerning the extent to which the decision rendered complies with*
12 *the law and prior decisions, the adequacy of the reasoning in the*
13 *decision, and the extent to which there is support for the finding of*
14 *facts and conclusions of law.*

15 (2) *The review by the senior or supervising hearing officer may*
16 *not interfere with the independence of the hearing officer to render*
17 *the final decision that he or she deems appropriate for the case.*

18 (d) Pursuant to subsection (a) of Section 300.514 of Title 34 of
19 the Code of Federal Regulations, during the pendency of the
20 hearing proceedings, including the actual state level hearing, or
21 judicial proceeding regarding a due process hearing, the pupil shall
22 remain in his or her present placement, except as provided in
23 Section 300.526 of Title 34 of the Code of Federal Regulations,
24 unless the public agency and the parent or guardian agree
25 otherwise. A pupil applying for initial admission to a public school
26 shall, with the consent of his or her parent or guardian, be placed
27 in the public school program until all proceedings have been
28 completed. As provided in subsection (c) of Section 300.514 of
29 Title 34 of the Code of Federal Regulations, if the decision of a
30 hearing officer in a due process hearing or a state review official
31 in an administrative appeal agrees with the pupil’s parent or
32 guardian that a change of placement is appropriate, that placement
33 ~~must~~ shall be treated as an agreement between the state or local
34 agency and the parent or guardian.

35 (e) Any party to the hearing held pursuant to this section shall
36 be afforded the following rights consistent with state and federal
37 statutes and regulations:

38 (1) The right to be accompanied and advised by counsel and by
39 individuals with special knowledge or training relating to the
40 problems of individuals with exceptional needs.

1 (2) The right to present evidence, written arguments, and oral
2 arguments.

3 (3) The right to confront, cross-examine, and compel the
4 attendance of witnesses.

5 (4) The right to a written, or, at the option of the parents or
6 guardians, electronic verbatim record of the hearing.

7 (5) The right to written, or, at the option of the parent or
8 guardian, electronic findings of fact and decisions. The record of
9 the hearing and the findings of fact and decisions shall be provided
10 at no cost to parents or guardians in accordance with paragraph (2)
11 of subsection (c) of Section 300.509 of Title 34 of the Code of
12 Federal Regulations. The findings and decisions shall be made
13 available to the public after any personally identifiable
14 information has been deleted consistent with the confidentiality
15 requirements of subsection (c) of Section 1417 of Title 20 of the
16 United States Code and shall also be transmitted to the Advisory
17 Commission on Special Education pursuant to paragraph (4) of
18 subsection (h) of Section 1415 of Title 20 of the United States
19 Code.

20 (6) The right to be informed by the other parties to the hearing,
21 at least 10 days prior to the hearing, as to what those parties believe
22 are the issues to be decided at the hearing and their proposed
23 resolution of those issues. Upon the request of a parent who is not
24 represented by an attorney, the agency responsible for conducting
25 hearings shall provide a mediator to assist the parent in identifying
26 the issues and the proposed resolution of the issues.

27 (7) The right to receive from other parties to the hearing, at least
28 five business days prior to the hearing, a copy of all documents and
29 a list of all witnesses and their general area of testimony that the
30 parties intend to present at the hearing. Included in the material to
31 be disclosed to all parties at least five business days prior to a
32 hearing shall be all assessments completed by that date and
33 recommendations based on the assessments that the parties intend
34 to use at the hearing.

35 (8) The right, pursuant to paragraph (3) of subsection (a) of
36 Section 300.509 of Title 34 of the Code of Federal Regulations, to
37 prohibit the introduction of any evidence at the hearing that has not
38 been disclosed to that party at least five business days before the
39 hearing.



(f) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision mailed to all parties to the hearing within 45 days from the receipt by the superintendent of the request for a hearing. Either party to the hearing may request the hearing officer to grant an extension. The extension shall be granted upon a showing of good cause. Any extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension.

(g) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(h) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

(i) Nothing in this chapter shall preclude a party aggrieved by the findings and decisions in a hearing under this section from exercising the right to appeal the decision to a state court of competent jurisdiction. An aggrieved party may also exercise the right to bring a civil action in a district court of the United States without regard to the amount in controversy, pursuant to Section 300.512 of the Code of Federal Regulations. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of any administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), unless the public education agency and the parents of the child agree otherwise, the child involved in the hearing shall remain in his or her present educational placement. Any action brought under this subdivision shall adhere to the provisions of subsection (b) of Section 300.512 of Title 34 of the Code of Federal Regulations.

(j) Any request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within three years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.

SEC. 2. Section 56505.1 of the Education Code is amended to read:

56505.1. The hearing officer may do any of the following during the hearing:

(a) Question a witness on the record prior to any of the parties doing so.

1 (b) With the consent of both parties to the hearing, request that
2 conflicting experts discuss an issue or issues with each other while
3 on the record.

4 (c) Visit the proposed placement site or sites when the physical
5 attributes of the site or sites are at issue.

6 (d) Call a witness to testify at the hearing if all parties to the
7 hearing consent to the witness giving testimony or the hearing is
8 continued for at least five days after the witness is identified and
9 before the witness testifies.

10 (e) Order that an impartial assessment of the pupil be conducted
11 for purposes of the hearing and continue the hearing until the
12 assessment has been completed. The cost of any assessment
13 ordered under this subdivision shall be included in the contract
14 between the department and the organization or entity conducting
15 the hearing.

16 (f) Bar introduction of any documents or the testimony of any
17 witnesses not disclosed to the hearing officer at least five business
18 days prior to the hearing and bar introduction of any documents or
19 the testimony of any witnesses at the hearing without the consent
20 of the other party not disclosed to the parties at least five business
21 days prior to the hearing pursuant to paragraph (7) of subdivision
22 (e) of Section 56505.

23 (g) In decisions relating to the provision of related services by
24 other public agencies, the hearing officer may call as witnesses
25 independent medical specialists qualified to present evidence in
26 the area of the pupil's medical disability. The cost for any witness
27 called to testify under this subdivision shall be included in the
28 contract between the department and the organization or entity
29 conducting the hearing.

30 (h) *Set a reasonable limit on the length of the hearing after*
31 *consideration of all of the following:*

32 (1) *The issues to be heard.*

33 (2) *The complexity of the facts to be proven.*

34 (3) *The ability of the parties and their representatives, if any,*
35 *to present their respective cases.*

36 (4) *The estimate of the parties as to the time needed to present*
37 *their respective cases.*

38 SEC. 3. Section 56506 of the Education Code is amended to
39 read:

1 56506. In addition to the due process hearing rights
2 enumerated in subdivision (b) of Section 56501, the following due
3 process rights extend to the pupil and the parent:

4 (a) Written notice to the parent of his or her rights in language
5 easily understood by the general public and in the primary
6 language of the parent or other mode of communication used by
7 the parent, unless to do so is clearly not feasible. The written notice
8 of rights shall include, but not be limited to, those prescribed by
9 Section 56341.

10 (b) The right to initiate a referral of a child for special education
11 services pursuant to Section 56303.

12 (c) The right to obtain an independent educational assessment
13 pursuant to subdivision (b) *or (c)* of Section 56329. ~~A local~~
14 ~~educational agency shall allow an independent educational~~
15 ~~assessment to be conducted pursuant to Section 56329, including~~
16 ~~the observation by an independent assessor of the pupil~~ *If a local*
17 *educational agency observed the pupil in conducting its*
18 *evaluation, or if its assessment procedures make it permissible to*
19 *have in class observation of a pupil, an equivalent opportunity*
20 *shall apply to an independent educational assessment of the pupil*
21 *in the pupil's current or proposed educational placement and*
22 *setting, regardless of whether the independent educational*
23 *assessment is initiated before or after the filing of a due process*
24 *hearing proceeding.*

25 (d) The right to participate in the development of the
26 individualized education program and to be informed of the
27 availability under state and federal law of free appropriate public
28 education and of all available alternative programs, both public
29 and nonpublic.

30 (e) Written parental consent pursuant to Section 56321 shall be
31 obtained before any assessment of the pupil is conducted unless the
32 public education agency prevails in a due process hearing relating
33 to the assessment. Informed parental consent need not be obtained
34 in the case of a reassessment of the pupil if the local educational
35 agency can demonstrate that it has taken reasonable measures to
36 obtain consent and the pupil's parent has failed to respond.

37 (f) Written parental consent pursuant to Section 56321 shall be
38 obtained before the pupil is placed in a special education program.

39 ~~SEC. 2. Notwithstanding Section 17610 of the Government~~
40 ~~Code, if the Commission on State Mandates determines that this~~

1 ~~act contains costs mandated by the state, reimbursement to local~~
2 ~~agencies and school districts for those costs shall be made pursuant~~
3 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~
4 ~~2 of the Government Code. If the statewide cost of the claim for~~
5 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~
6 ~~reimbursement shall be made from the State Mandates Claims~~
7 ~~Fund.~~

8 *No reimbursement is required by this act pursuant to Section 6*
9 *of Article XIII B of the California Constitution because this act*
10 *implements a federal law or regulation and results only in costs*
11 *mandated by the federal government, within the meaning of*
12 *Section 17556 of the Government Code.*

